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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1968

PEOPLE OF THE STATE OF ILLINOIS EX REL. WILLIAM I. LANDWER,

Petitioner,

vs.

VILLAGE OF NORTH BARRINGTON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois entered in the above case on September 23, 1968.

OPINIONS BELOW

The Supreme Court of Illinois did not render an opinion. The opinion of the Illinois Appellate Court for the Second Judicial District is reported at 94 Ill. App. 2d 265. The opinion of the Circuit Court of Illinois for the Nineteenth Judicial Circuit, Lake County, Illinois, is unreported. A copy of the Circuit Court opinion is appended hereto in Appendix A at p. 1.

JURISDICTION

The judgment of the Supreme Court of Illinois was made and entered on September 23, 1968. The Judgment of the Illinois Appellate Court, Second Judicial District, was made and entered on April 4, 1968 and the petition for rehearing was denied June 19, 1968. The jurisdiction of this Court is invoked under U.S.C.A., Title 28, Sec. 1257(3).

QUESTION PRESENTED

The question presented in this case is whether the principles of fair notice laid down by this Court in *Mullane* v. *Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1950), and reiterated in *Walker* v. *City of Hutchinson*, 352 U.S. 112 (1956), and *Schroeder* v. *City of New York*, 371 U.S. 203 (1962), apply to a judicial proceeding that is a necessary step before landowners seeking annexation to a municipality can include in the annexation proposal the land of owners not joining in the annexation petition.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. U. S. Const., Amend. XIV, Sec. 1:

   "...nor shall any State deprive any person of life, liberty, or property, without due process of law..."

2. Ill. Rev. Stat. Ch. 24, §§ 7-1-1 through 7-1-4, and 7-1-7, which are set forth in Appendix I at pp. 22 through 27.

STATEMENT

William Landwer, your petitioner, is the owner of a tract of 160 acres of land which is the North East quarter of Section 22, Township of Cuba, Lake County, Illinois (R. 291-292). This land is unimproved and used for farming. At all relevant times no one lived on the land. (R. 308).

Mr. Landwer resides at 320 Oak Knoll, Barrington, Illinois, about 1¾ miles south of the tract (R. 316). His home and business addresses are both in Barrington. They are both listed in the Northwest section of the Barrington telephone book where North Barrington Telephone numbers are also listed (R. 69). He is the record owner of the tract and the Cuba Township assessment records show that the property is assessed to William Landwer, 320 Oak Knoll, Barrington, Illinois (R. 161).

Prior to October 17, 1963, the entire 160 acres was unincorporated. The eastern edge of the property was located approximately ⅔ of a mile from the then boundary of the Village of North Barrington. When the Cuba Township Assessment Rolls for 1964 were published in the Barrington Courier Review, on September 3, 1964, Mr. Landwer learned for the first time that a strip of his property 300 feet wide and 2,640 feet long, containing 18.2 acres and bisecting the quarter section, had been annexed to the Village of North Barrington (R. 298). Investigation disclosed the following facts. At some time prior to September 19, 1963, Mr. William Braithwaite, who was village attorney for the Village of North Barrington, prepared a petition for the annexation of an irregular twenty-sided polygon of property with a square hole in the middle. A map of this area appears in the opinion of the Circuit Court, appended to this petition as Appendix A at p.

12. The property included in the petition consisted of five parcels owned by five persons who, together with their wives, signed the petition, and four parcels owned by non-signers. The land of the signers was generally west and southwest of the village, but not contiguous to its boundaries. The necessary contiguity was achieved by including in the proposal an L-shaped corridor through a larger parcel of land. To the west the area annexed continued in a 300 foot corridor through the middle of a parcel owned by a Mr. Mehlman and through the quarter section owned by your petitioner, ending in a two and one half acre open field owned by Quaker Oats Co. Though at the time Mr. Mehlman lived on his property the corridor did not include his home. (R. 63).

The annexation petition was filed on September 19, 1963. The Illinois statute requires that notice of a hearing on such a petition shall be given not more than thirty nor less than fifteen days before the date of the hearing (Ill.Rev.Stat., Ch. 24, § 7-1-2), and that such notice "shall be given by publishing a notice thereof in one or more newspapers published in the annexing municipality, or, if no newspaper is published therein, then in one or more newspapers with a general circulation within the annexing municipality and territory." (*Id.*) There are no newspapers published in the Village of North Barrington. In Cuba Township the Barrington Courier Review, published in the Village of Barrington, had a circulation of approximately 4,000. (R. 74). Seven out of ten of the signers of the annexation petition were subscribers to this paper. (R. 20, 42, 97, 103, 115, 117, 120, 125, 128, 163). The Frontier Enterprise, published in Lake Zurich in adjoining Ela Township, had a circulation in Cuba Township estimated at between 75 and 150 (R. 86). None of the signers of the annexation petition subscribed to it. (R. 35,

43-4, 97, 103, 115, 117, 120, 125-6, 128, 164), though some of the signers testified that they purchased it at various times on the newsstand. Neither Mr. Landwer (R. 309), nor Mr. Mehlman (R. 64), had ever heard of the Frontier Enterprise.

The only notice of the proceeding on the petition was published once in the Frontier Enterprise on September 26, 1963. This notice identified by lot number two of the five parcels belonging to the signers, and described separately one portion of the corridor extending from the signers' property to the village line. The remainder of that corridor, the parcels owned by three of the signers, the three hundred foot corridor that cut through the land of Mr. Mehlman and through the land of your petitioner, and the two and a half acre field owned by the Quaker Oats Co., were described by metes and bounds in a single paragraph of nearly six hundred words. (R. C40 through C43). No personal notice was given to any of the non-signers except Quaker Oats who were personally informed. No one informed either your petitioner or Mr. Mehlman (R. 301, 66). Two signers of the annexation petition testified to the effect that they did not know who talked with Quaker Oats (R. 17, 178) but that Quaker Oats agreed not to object. (R. 16, 17). Quaker Oats was the perimeter owner, and under the Illinois statute, the owner of land located on the perimeter of a proposed annexation, the exclusion of which will not destroy contiguity, may have his land excluded by petitioning the court at the hearing on the annexation petition (Ill. Rev. Stat. Ch. 24, Sec. 7-1-3 (4), 7-1-4).

When he was made aware of the annexation through the publication in the Barrington Courier Review of the 1964 tax assessment roll, your petitioner filed the petition

for leave to file a quo warranto challenging the validity of the annexation on the ground that he had not been given notice under the Illinois statute and under the requirements of due process as explained by this Court in *Mullane, City of Hutchinson,* and *Schroeder.* The constitutional question was raised in the pleadings (R. C104), and at the trial (R. 9).

The Circuit Court found that the notice given was neither calculated to reach the non-signers, or if it reached them, calculated to inform them that their property was included, and issued an order of ouster (R. C188 through C200). On appeal the Illinois Appellate Court reversed and denied a petition for rehearing. The Supreme Court of Illinois denied leave to appeal.

WHY THE WRIT SHOULD BE GRANTED

The writ should be granted in this case to correct what your petitioner submits is an erroneous application of the broad dictum in *Hunter* v. *Pittsburgh,* 207 U.S. 161 (1909) to permit a self-defined group of landowners, sworn to no public duty and serving no interest but their own, to initiate and prosecute a judicial proceeding that will fix within the boundaries of a proposed annexation to a village of their choice such land of their neighbors as they see fit to include, without serving notice that meets the standard of minimum fairness worked out by this Court in *Mullane* and the cases that have followed it.

The question is of great public importance, for it arises in the context of a rapidly growing suburban area in which there exists considerable tension between the owners of undeveloped land who are anxious to realize upon their investment and some residents who seek to preserve the exclusiveness of their areas by imposing large minimum lot restrictions such as the five acre minimum that forms a backdrop to this case. These restrictions are often enforced and extended by the organization of municipal corporations and the manipulation of their boundaries. These corporations very frequently perform a minimum function in terms of services and are sometimes referred to as "zoning villages." The possible abuses of such a system absent a requirement of fair notice are apparent and well illustrated by the record in the case below. The statute at the time of the filing of the annexation petition in the case below required that the petition be signed by (1) a majority of the property owners, (2) a majority of the electors resident in the area, and (3) the owners of a majority of the property in the area to be annexed. But re-

lating these requirements to the methods by which the annexation below was planned and executed, these trappings of democracy disappear. As to property owners, the petitioners, by eliminating a lot in the center of their area, were able to exercise control of their total number minus one. As to electors, while we have no testimony about the number of electors residing in the residences of the owners of the corridors to the east and west of the properties of the signers of the annexation petition, it is plain that the corridors were carved through the owner's land in a fashion that eliminated their homes. As to a majority of the acreage, by taking narrow corridors effective control over the future subdivision of a Parcel half a mile square has been accomplished by the owners of a small fraction of that much land.

This case is a far cry from *Hunter* v. *Pittsburgh*. In that case the Court was dealing with a consolidation of two populous municipalities pursuant to a special statute adopted by the general assembly, and after an election that was held in the area comprising both cities. Such an election on such an issue is notorious enough so that ordinarily the notice problem does not arise. Further, since the *Hunter* case came to the Court on writ of error from the judicial proceeding calling the election, there was no problem as to actual notice to the appellants. All of them had been parties to the proceeding below.

Furthermore, when, as in the *Hunter* case the decision is left to the vote of the people, the function of notice is to encourage public discussion and participation. In the case below, by contrast, if the landowner is deprived of notice of the hearing on the petition, the decision to include his land in the proposal submitted to the village will be left wholly to his neighbors who may very well have interests

antithetical to his own. If it be said that his interests are protected by the village board which ultimately must accept the annexation, it is enough to point out that as a practical matter notice of the hearing on the petition is the key to an awareness of any subsequent steps. In the case below, for example, once the county court had referred the petition to the village authorities, they received approval of the planning commission, prepared the ordinance, convened a special meeting of the village board, and adopted the annexation—all within the span of three days.

Finally, the alternative holding of the Illinois Appellate Court that the availability of the quo warranto remedy takes the hearing on the petition out of the *Mullane* doctrine is, your petitioner submits, unsound. The availability of quo warranto limits the area of proof very materially. In the first place the defendant becomes the village rather than the signers, limiting the range of examination of the annexation petitioners. In the second place, in the proceeding below the judge held that facts established in the hearing on the petition could not be attacked in the quo warranto proceeding. (R. 107).

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

EVA SCHWARTZMAN
Attorney for Petitioner